

WILLIAM SEYMORE
Claimant

MIDLAND STEEL COMPANY
Respondent

BUILDERS ASSN. SELF-INSURANCE FUND
Insurance Carrier

[illegible]

ORDER

ISSUES

Administrative Law Judge (ALJ) denied claimant's request for temporary total disability compensation but granted claimant's request for medical treatment through Dr. Paul Arnold, as the authorized treating physician. In reviewing the June 20, 2001, preliminary hearing record, the respondent denied this claim based on the contention that claimant's accidental injury did not arise out of and in the course of his employment with respondent.

This is the second preliminary hearing held and the second preliminary hearing order entered in this case. The first preliminary hearing was held on December 8, 1999, that resulted in a December 9, 1999, preliminary hearing order that also denied claimant's request for temporary total disability compensation but granted claimant's request for medical treatment through Paul Geiger, Jr. D.O., as authorized treating physician. The issue at that preliminary hearing was also whether claimant suffered an accidental injury that arose out of and the course of his employment with respondent.

That preliminary hearing order was timely appealed to the Appeals Board (Board). In an order dated February 17, 2000, the Board reversed the ALJ's preliminary hearing Order and found that claimant only proved his back injury was caused by a sneeze at work, which standing alone was not a compensable injury. The Board further found the evidence failed to establish that the work claimant was performing at the time he sneezed contributed to the injury.

Before the June 20, 2001 preliminary hearing was held, claimant took the evidentiary deposition of his treating physician, Dr. Geiger, on August 2, 2000. Claimant contends Dr. Geiger's testimony coupled with his additional testimony contained in the June 20, 2001, preliminary hearing record, proved that claimant's low back injury was related to his employment and is compensable. The claimant requested the Board to affirm the preliminary hearing Order.

In contrast, respondent argues neither Dr. Geiger's testimony nor claimant's additional testimony changes the weight of the evidence and claimant has again failed to prove that his low back injury has any relationship to his employment. The respondent requests the Board to again reverse the preliminary hearing Order and deny claimant's request for preliminary hearing benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Board finds that the June 22, 2001, preliminary hearing Order should be affirmed.

On the September 15, 1999, accident date, claimant was working for respondent as an overhead crane operator. On the morning of September 15, 1999, claimant laid out metal bent plates weighing 700 to 800 pounds and measuring 20 feet in length on steel horses for the welders. Claimant used the crane to lay out the bent plates and he then separated the plates for the welders to walk between by hand using a metal bar. As claimant was sliding one of the metal plates across the steel horse, he testified "It caught on an arc" on top of one of the horses and "I caught a jar." Claimant immediately felt pain in his lower back. He continued to work and tried to stretch and work the pain out.

But about 15 or 20 minutes later, claimant was working in the paint bay area operating the crane to turn steel beams that had been painted on one side. As claimant was unhooking the chain from one of the beams, he sneezed from the smell of the strong paint fumes. The sneeze caused extreme pain in his lower back and down his right leg. Claimant testified the pain almost knocked him down.

Claimant notified the respondent of his low back problems and he immediately sought medical treatment on his own with his family physician, Paul J. Geiger, D.O., Dr. Geiger had recently treated him for abdominal pain and nausea. The record does not contain any evidence there is any connection between the previous abdominal pain and claimant's current low back problems. In fact, the record does not indicate that claimant had any problems with his low back before the September 15, 1999, incident.

Dr. Geiger took claimant off work, prescribed medication, and had claimant undergo an MRI examination on October 29, 1999. The MRI examination showed claimant with a significant bulging disc compromising the adjacent nerve root at L4-L5. Dr. Geiger in a letter dated May 23, 2000, stated, "It is my opinion that he (claimant) suffered an injury to

the disc at L4-L5 that is consistent with irritation by a sneeze and not caused by the sneeze. The doctor testified, that some sort of a strain caused claimant's disc to rupture. But the sneeze itself just caused an exacerbation of the pain. Dr. Geiger, however, also testified that he was not sure what caused the disc to herniate.

The Board finds significant that claimant did not have any low back complaints before he felt immediate pain after separating the heavy metal bent plates at work on September 15, 1999. That pain continued and then worsened after about 15 or 20 minutes when claimant sneezed. Although Dr. Geiger testified he did not know what caused claimant's disc to herniate, he did opine that claimant suffered an injury to the disc at L4-L5 that was irritated by the sneeze and not caused by the sneeze.

Accordingly, the Board concludes the evidence presented as a whole, at this juncture of the proceedings, proves that claimant's low back injury was more likely than not caused by claimant moving the large heavy metal plates at work and then the injury was exacerbated by him sneezing at work.

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Bryce D. Benedict's June 22, 2001, preliminary hearing Order should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

c: Bruce A. Brumley,, Attorney for Claimant
Wade A. Dorothy, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director